

John J. Pringle, Jr.
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April 20, 2004

VIA ELECTRONIC MAIL SERVICE AND HAND DELIVERY

The Honorable Bruce Duke
Executive Director
South Carolina Public Service Commission
PO Drawer 11649
Columbia SC 29211

RE: Complaint of TC Systems, Inc. against BellSouth Telecommunications,
Inc.
Docket No. 2004-_____, Our File No. 611-10226

Dear Mr. Duke:

Enclosed is the original and fifteen (15) copies of the **Complaint and Request for Expedited Resolution of TC Systems, Inc. Against BellSouth Telecommunications, Inc. for Failure to Comply with 47 U.S.C. § 252(i), and Petition for Approval of § 252(i) Adoption of Existing Interconnection Agreement** filed on behalf of TC Systems, Inc. in the above-referenced matter.

Please acknowledge your receipt of this document by file-stamping the copy of this letter enclosed, and returning it via the person delivering same.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

/S/

John J. Pringle, Jr.

JJP/cr

cc: Gene Coker, Esquire
all parties of record

Enclosures

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BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

In the matter of
Complaint of TC Systems, Inc. against)
BellSouth Telecommunications, Inc.)
for Failure to Comply with) DOCKET NO. _____
47 U.S.C. § 252(i), Petition for)
Approval of § 252(i) Adoption of Existing)
Interconnection Agreement, and Request)
for Expedited Proceeding)

**COMPLAINT AND REQUEST FOR EXPEDITED RESOLUTION OF TC SYSTEMS,
INC. AGAINST BELL SOUTH TELECOMMUNICATIONS, INC. FOR FAILURE TO
COMPLY WITH 47 U.S.C. § 252(i), AND PETITION FOR APPROVAL OF § 252(i)
ADOPTION OF EXISTING INTERCONNECTION AGREEMENT**

TC Systems, Inc. ("TCS"), pursuant to S.C. Code § 58-9-1080 and Rule 103-835 of the S.C. Public Service Commission Regulations, files this Complaint against BellSouth Telecommunications, Inc. ("BellSouth"), this Petition for Approval of § 252(i) Adoption of an Existing Interconnection Agreement, and this Request for Expedited Proceeding and seeks an order of the Commission:

- (a) compelling BellSouth to comply with its obligations under 47 U.S.C. § 251 and 252 and 47 C.F.R. 51.809(a), and
- (b) requiring BellSouth to execute the Adoption Agreement attached hereto, as Exhibit A ("Adoption Agreement"), and
- (c) approving TCS's § 252(i) adoption of the interconnection agreement between BellSouth and AT&T Communications of the Southern States, LLC ("AT&T") ("BellSouth/AT&T Agreement").
- (d) granting TCS' request for expedited resolution of this matter.

In support hereof, TCS states as follows:

INTRODUCTION

1. The name and address of the petitioner are:

TC Systems, Inc.
One AT&T Way
Bedminster, New Jersey 07921
(908) 532-1866

2. All pleadings and filings served or issued in this docket should be served on the following:

John J. Pringle, Jr.
Ellis, Lawhorne & Sims, P.A.
PO Box 2285
Columbia, SC 29202
Phone: (803) 343-1270

Gene V. Coker
Suite 8100
1200 Peachtree Street NE
Atlanta, Georgia 30309

3. BellSouth is an incumbent local exchange carrier (ILEC) providing telecommunications services in South Carolina. BellSouth's official business address is:

BellSouth Telecommunications, Inc.
675 W. Peachtree St., NE
Atlanta, GA 30375

FACTUAL BACKGROUND

4. TC Systems, Inc. ("TCS") was organized under the laws of the State of Delaware on September 20, 1989. TCS is an indirect, wholly-owned subsidiary of AT&T Corp. and an affiliate of AT&T Communications of the Southern States, LLC.

5. AT&T Corp. is a New York corporation with headquarters at 32 Avenue of the Americas, New York, New York 10013-2412. AT&T Corp. is the ultimate parent corporation of

TC Systems and AT&T Communications of the Southern States, LLC. AT&T Corp., on its own and through a number of subsidiaries, is authorized to provide domestic and international telecommunications services throughout the United States. In addition, it is authorized through a number of subsidiaries, including TC Systems, to provide local exchange service in all 50 states.

6. On March 10, 2004 TCS submitted to the Commission an application for a certificate of public convenience and necessity to provide local exchange service and intrastate interexchange services within the state of South Carolina. TCS has never held such a certificate in South Carolina.

7. Because TCS and AT&T are separate entities, TCS must obtain a separate interconnection agreement with BellSouth. TCS and BellSouth have never entered into an interconnection agreement in South Carolina.

8. On February 25, 2004 TCS notified BellSouth that TCS elected to take service pursuant to the entire terms and conditions of the existing Master Interconnection and Resale Agreement approved by the Public Service Commission of South Carolina effective December 21, 2001, between BellSouth and AT&T, for the remaining term of the BellSouth/AT&T Agreement. The BellSouth/AT&T Agreement terminates December 20, 2004.

9. At the time of TCS's request, Triennial Review Order ("TRO") amendment negotiations between AT&T and BellSouth regarding the BellSouth/AT&T Agreement were ongoing. These negotiations do not affect the vitality of the opt-in provisions under Section 252(i) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), or the applicability of these provisions to TCS.

10. On March 8, 2004 BellSouth notified TCS that the BellSouth/AT&T Agreement was not available for adoption. BellSouth's stated reason was that the agreement TCS requested "is not compliant with current law, and therefore, is not available for adoption."

11. On March 10, 2004 TCS responded to BellSouth's denial of the opt-in request. TCS notified BellSouth that its position was unsupported by the Act or FCC rules, and was contrary to the purpose underlying the opt-in provisions in the Act. TCS further explained that it was appropriate for BellSouth to request that TCS negotiate TRO amendment language, but that these negotiations should take place after BellSouth fulfills its obligation to allow TCS adoption of the agreement.

12. On March 18, 2004 BellSouth again denied TCS's opt-in request. BellSouth denied that it had refused to allow TCS the ability to adopt the BellSouth/AT&T Agreement, but BellSouth advised TCS that the Agreement could not be adopted without replacing the Unbundled Network Element (UNE) Attachment with the BellSouth Standard UNE Attachment.

13. On March 29, 2004 TCS responded advising BellSouth that its position was not acceptable because the BellSouth/AT&T Agreement is an existing Commission-approved agreement. Any negotiation of terms in that agreement should occur after TCS opts in. In a spirit of compromise, TCS offered to agree that opt-in be conditional upon an obligation to incorporate fully into the agreement the results of the ongoing TRO amendment negotiations.

14. On April 2, 2004, BellSouth refused to accept TCS's compromise. BellSouth refused to allow TCS to opt-in to the existing Commission-approved BellSouth/AT&T Agreement.

DISCUSSION

15. Section 252(i) of the Act provides that:

A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

16. Section 51.809(a) of the FCC's rules states that:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement.

17. The BellSouth/AT&T Agreement is an agreement to which BellSouth is a party, and it contains the terms and conditions for individual interconnection, service or network element arrangements that TCS has asked to be made available pursuant to Section 252(i) of the Act. The BellSouth/AT&T Agreement, which TCS wishes to adopt, has been deemed approved by the Commission¹ and has not expired. The BellSouth/AT&T Agreement is "available" for election by TCS to adopt, and BellSouth must make it available without any more delay.

18. BellSouth's denial of TCS's opt-in request is contrary to both the Act and FCC rules. BellSouth is unilaterally placing conditions on its obligations to permit TCS to adopt a current interconnection agreement pursuant to Section 252(i). BellSouth cannot make negotiation of TRO amendment language a condition precedent to granting TCS's opt-in request. Rather, after fulfilling its obligation to allow TCS adoption of the BellSouth/AT&T Agreement, BellSouth may properly request that TCS, consistent with the terms of the BellSouth/AT&T Agreement, negotiate TRO amendment language as necessary. Any other approach not only

¹ See *letter granting approval of the Commission*, Docket No. 1996-358-C (February 21, 2002).

violates the clear language of the Act and FCC rules, but also is contrary to the purpose underlying the “opt-in” provisions of Section 252(i) – to prevent discrimination by an RBOC against its competitors, or granting favor to one market entrant over another.

19. BellSouth will not be harmed by permitting TCS to adopt the BellSouth/AT&T Agreement while the parties continue to negotiate a TRO Amendment that address the specific changes found in the FCC’s TRO Order and leaves untouched the other terms and conditions of the BellSouth/AT&T Agreement.

20. BellSouth has delayed unreasonably TCS’s ability to adopt the BellSouth/AT&T Agreement to TCS’s detriment. BellSouth’s position is no more than a ruse to avoid its obligations under the Act and the FCC’s rules, and to force TCS to submit to terms and conditions that are not consistent with the rules adopted in the FCC’s TRO or differ materially from the terms and conditions in the BellSouth/AT&T Agreement, even though such terms and conditions were not affected by the FCC’s TRO.

21. Exhibit A, which is attached and is incorporated by reference hereto, is the adoption agreement executed by TCS. TCS asks that the Commission compel BellSouth to countersign the Adoption Agreement and to take such action as is necessary to approve the Adoption Agreement.

22. The Commission should grant expedited treatment to this proceeding because continued delay will only compound the negative impact on competition produced by BellSouth’s refusal to honor its existing statutory obligations. Further delay in this matter will simply enable BellSouth to accomplish its goal of stifling competition and avoiding the obligations dictated by the Act.

PRAYER FOR RELIEF

WHEREFORE, TCS prays that the Commission:

- (a) grant expedited treatment to this proceeding;
- (b) compel BellSouth to comply with its obligations under 47 U.S.C. §§ 251 and 252 and 47 C.F.R. § 51.809(a);
- (c) require BellSouth to execute the Adoption Agreement attached hereto, as Exhibit A; and
- (d) approve TCS's § 252(i) adoption of the interconnection agreement between BellSouth and AT&T dated December 21, 2001; and
- (e) grant such other and further relief as the Commission may deem appropriate.

Respectfully submitted this 20th day of April, 2004.

/S/

John J. Pringle, Jr.
ELLIS, LAWHORNE & SIMS, P.A.
PO Box 2285
Columbia, SC 29202
Telephone: (803) 343-1270

Exhibit A

Adoption Agreement

MASTER NETWORK INTERCONNECTION AND RESALE AGREEMENT

BETWEEN

BELLSOUTH TELECOMMUNICATIONS, INC.

AND

TC SYSTEMS, INC.

This Master Network Interconnection and Resale Agreement ("Agreement") between TC Systems, Inc. ("TCS") and BellSouth Telecommunications, Inc. ("BellSouth"), herein collectively, "the Parties", is entered into and effective this ____ day of _____, 2004 for the State of South Carolina.

NOW THEREFORE, the Parties agree as follows:

The Parties agree that the Agreement between the Parties shall consist of the Interconnection and Resale Agreement for the State of South Carolina entered into by and between BellSouth and AT&T Communications of the Southern States, LLC, dated October 8, 2003 (the "Adopted Agreement"), amended as follows:

1. TERM

1.1 This Agreement shall be in force for the period commencing with the date set forth above and continuing until the ____ of _____, or the effective date of a superceding interconnection and resale agreement which is either voluntarily agreed to by the Parties or results from an arbitration order between the parties issued by the Public Service Commission of South Carolina ("South Carolina Commission"), whichever is earlier.

2. GENERAL

2.1 Other than as set forth above, the Adopted Agreement remains unchanged and in full force and effect. In the event of a conflict between the terms of this Agreement and the Adopted Agreement, this Agreement will control.

2.2 This Agreement executed by authorized representatives of BellSouth and TCS is made a part of and incorporates the terms and conditions of the Adopted Agreement.

3. NOTICES

3.1 Except as otherwise provided, all notices and other communication hereunder

shall be deemed to have been duly given when made in writing and delivered in person or deposited in the United States mail, certified mail, postage paid, return receipt requested and addressed as follows:

To TCS: Mr. Bill Peacock
Director – Local Services & Access Management
AT&T
6304 Highway 5
Douglasville, GA 30135

To BellSouth:

4. PARTIES

TCS is hereby substituted in the Adopted Agreement for AT&T and BellSouth shall remain as the other Party to the Adopted Agreement. Except as modified above, the Agreement shall in all other respects reflect the same terms as the Adopted Agreement.

5. RESERVATION

The Parties acknowledge that TCS has made the election under Section 252(i) of the Act to enter into this Agreement in order to promptly serve local customers in BellSouth territory in South Carolina. Accordingly, TCS’s entering into this Agreement shall not be construed as acceptance of such rates, terms and conditions for any subsequent interconnection agreement. TCS hereby reserves the right, and shall not be construed to have waived its right, to fully negotiate and arbitrate an interconnection agreement with BellSouth in South Carolina, and elsewhere, which may include TCS advocating rates, terms and conditions that differ from those contained in this Agreement.

IN WITNESS WHEREOF, BellSouth and TCS have caused this Agreement to be executed by its duly authorized representatives.

“BellSouth”	BellSouth Telecommunications, Inc.	“TCS”	TC Systems, Inc.
By:	_____	By:	_____
Name (typed):	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

In the matter of
Complaint of TC Systems, Inc. against)
BellSouth Telecommunications, Inc.)
for Failure to Comply with)
47 U.S.C. § 252(i), Petition for)
Approval of § 252(i) Adoption of Existing)
Interconnection Agreement, and Request)
for Expedited Proceeding

DOCKET NO. _____

This is to certify that I have caused to be served this day, one (1) copy of the **Complaint and Request for Expedited Resolution of TC Systems, Inc. Against BellSouth Telecommunications, Inc. for Failure to Comply with 47 U.S.C. § 252(i), and Petition for Approval of § 252(i) Adoption of Existing Interconnection Agreement** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

VIA ELECTRONIC AND FIRST-CLASS MAIL SERVICE

Patrick Turner, Esquire
BellSouth Telecommunications, Inc.
PO Box 752
Columbia SC 29202-0752

/S/

Carol Roof

April 20, 2004
Columbia, South Carolina